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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/074,974	02/13/2002	Sheldon R. Pinnell	SKIC001	6893

7590

02/10/2003

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EXAMINER

PATTEN, PATRICIA A

ART UNIT

PAPER NUMBER

1654

DATE MAILED: 02/10/2003

8

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/074,974

Applicant(s)

Pinnell et al.

Examiner

Patricia Patten

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Nov 18, 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above, claim(s) 1-15, 27, and 28 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 16, 17, 19, and 21-26 is/are rejected.
- 7) ☒ Claim(s) 18 and 20 is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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DETAILED ACTION

Claims 1-28 are pending in the application.

Claims 1-15 and 27-28 were withdrawn from consideration in Paper No. 4 as being drawn to a non-elected invention.

Claims 16-26 have been presented for examination on the merits.

It is noted that the Amendment to the Specification was not entered because Applicant did not submit a clean version of the Specification paragraph.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Specification

The specification remains objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Claim 26 states wherein the pH of the composition is about 2.0 to 4.5. There is no teaching in the Specification wherein the

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pH of the composition is 2.0. (Please note that submission of the clean version of the amendments to the Specification will overcome this rejection) Clarification is necessary.

Claim Rejections - 35 USC § 103

Claims 16-17, 19 and 21-26 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Neigut (US 5,378,461) in view of Bates (US 4,704,280) in light of Ganguli et al. (US 5,998,641)* for the reasons set forth in the Office Action dated 7/16/02.

Applicants' arguments were fully considered, but not found persuasive.

Applicant first argues that, 'Neigut's treatment in most of its embodiments does not contain olive oil at all'. However, as it was pointed out in the previous Office Action, Neigut did disclose the composition which comprised olive oil along with vitamins including vitamin E, thus the embodiment was disclosed by Neigut. Applicants further argue that '...there is not suggestion in Neigut of a product containing a non-aqueous olive-leaf extract....Applicant respectfully submits that olive oil is obtained from the olive

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fruit and not typically from olive leaves' as described by Ganguli et al. Although it may be true that olive oil is commonly obtained from the fruit of the olive, Applicants have not provided substantial evidence that olive oil is not obtained from olive leaves. In the Instant case, Applicants are claiming a product containing a non-aqueous olive-leaf extract. This is not a composition comprising a non-aqueous solvent extract of olive leaf. Because Neigut disclosed 'olive oil' and because a non-aqueous olive-leaf extract could be olive oil, the rejection stands.

Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). In the instant case, the term 'non-aqueous olive-leaf extract' was given its broadest interpretation within reason, and it was deemed that a non-aqueous olive-leaf extract' could be olive oil.

Applicant further argues the references separately on p. 5- In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Further, in response to applicant's argument that there is no suggestion to combine the references,

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the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

Allowable Subject Matter

Claims 18 and 20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

No Claims are allowed.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to examiner Patricia Patten, whose telephone number is (703)308-1189. The examiner can normally be reached on M-F from 9am to 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor Brenda Brumback is on 703-306-3220. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4242.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.



**CHRISTOPHER R. TATE
PRIMARY EXAMINER**